

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

JUN 20 2018

Clerk, US District Court
District of Montana - Billings

CHAD CHANDLER,

Plaintiff,

vs.

WHITING OIL AND GAS
CORPORATION, PIONEER
DRILLING SERVICES, and DOES A-
Z,

Defendants.

CV 17-118-BLG-SPW

ORDER ADOPTING
MAGISTRATE'S FINDINGS
AND RECOMMENDATION

Before the Court are United States Magistrate Judge Timothy Cavan's Findings and Recommendation filed on May 17, 2018. (Doc. 18). Judge Cavan recommends that this Court grant Chad Chandler's motion to remand (Doc. 5).

I. Standard of review

Pioneer Drilling Services filed timely objections to the findings and recommendations. (Doc. 19). Pioneer is entitled to de novo review of those portions of Judge Cavan's findings and recommendations to which it properly objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

II. Background

Pioneer objects to Judge Cavan’s conclusion that Pioneer was properly served. Pioneer does not object to Judge Cavan’s factual findings. Judge Cavan’s factual findings are adopted in full.

III. Discussion

“When a case is removed from state court to federal court, the question whether service of process was sufficient prior to removal is governed by state law.” *Whidbee v. Pierce County*, 857 F.3d 1019, 1023 (9th Cir. 2017). In Montana, a business entity may be served by “delivering a copy of the summons and complaint to the registered agent named on the records of the secretary of state.” Mont. R. Civ. P. 4(i)(3)(C). A signed return of service constitutes prima facie evidence of valid service which can be overcome only by strong and convincing evidence. *S.E.C. v. Internet Solutions for Business Inc.*, 509 F.3d 1161, 1163 (9th Cir. 2007).

It is undisputed that (1) Chandler, through a process server, hand delivered to Smith Law Firm the summons and complaint; (2) Smith Law Firm is paid by Capitol Corporate Services (CCS) to receive service of process on CCS’s behalf; (3) CCS is the registered agent for service of process for Pioneer; (4) Pioneer lists Smith Law Firm’s address as CCS’s address in Pioneer’s business listing with the Montana Secretary of State; (5) Chandler’s process server executed a proof of

service that stated CCS was served; (6) Smith Law Firm is also paid by Corporation Service Company (CSC) to receive service of process on CSC's behalf; (7) Smith Law Firm asks process servers to write on the summons the name of the entity being served; (8) Chandler's process server wrote "CSC 10/28 11:50" on the summons; and (9) Smith Law Firm sent the summons to Corporation Service Company, not Capitol Corporate Services.

Pioneer argues service was invalid because the process server's notation on the summons indicated to Smith Law Firm that the summons and complaint should be sent to CSC, not CCS. While that argument has some appeal, the process server's notation is not "strong and convincing" enough evidence to overcome the signed return of service which states CCS was served and the other undisputed facts which establish Chandler "delivered a copy of the summons and complaint to the registered agent named on the records of the secretary of state" when he handed the summons and complaint to Smith Law Firm, who is paid by CCS to receive process on CCS's behalf, and whose address Pioneer itself lists with the Montana Secretary of State as the address where service should be made.

IV. Conclusion and order

1. The proposed Findings and Recommendations entered by United States Magistrate Judge Cavan (Doc. 18) are ADOPTED IN FULL.
2. Pioneer's objection is OVERRULED.

3. Chandler's motion to remand (Doc. 5) is GRANTED and this case is remanded to the Montana Seventh Judicial District Court, Richland County.

4. Pioneer's motion to quash summons (Doc. 7) and motion to set aside default (Doc. 9) are DENIED because this Court is without jurisdiction.

The Clerk of Court is directed to close this matter.

DATED this 20th day of June, 2018.



SUSAN P. WATTERS
United States District Judge